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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Autofrigo Europe S.r.l.

File: B-292753

Date: November 20, 2003

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John A. Burkholder, Esq., McKenna Long & Aldridge, for EBREX Food Services S.a.r.l., an intervenor.

J. Albert Calluso, Esq., and Marlene M. Surrena, Esq., Defense Logistics Agency, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably awarded a contract for commercially available, prime vendor food and non-food distribution services to the offeror which submitted the higher technically rated, lower priced proposal.

DECISION

Autofrigo Europe S.r.l. protests the award of a prime vendor contract to EBREX Food Services S.a.r.l. under request for proposals (RFP) No. SPO300-02-R-4003, issued by the Defense Supply Center Philadelphia, Defense Logistics Agency, for full line food and non-food distribution services in Southern Europe (the Azores, Spain, France, Italy, Greece, Turkey, Bulgaria, Macedonia, Kosovo, Romania, ships at any port of call in Europe south of the Alps, and United States military exercises in Europe south of the Alps or northern Africa). Autofrigo challenges the agency's evaluation of proposals.

We deny the protest.¹

¹ This decision addresses the two primary issues presented in Autofrigo's protest. Autofrigo raised a number of collateral issues that we have considered and find to be without merit; these collateral issues do not warrant detailed analysis or discussion.

BACKGROUND

The RFP for this commercial item acquisition was issued on May 10, 2002 on an unrestricted basis and contemplated the award of an indefinite-delivery/indefinite-quantity, fixed-price contract with an economic price adjustment for the base period and four 1-year option periods to the responsible offeror whose proposal was determined to represent the best value to the government, with technical evaluation factors being considered significantly more important than price. The RFP contained the following technical evaluation factors, listed in descending order of importance: experience/past performance, product availability, distribution systems/capability, quality assurance, contingencies, and back-up zone plans. Each of these technical evaluation factors contained a number of subfactors. The RFP provided that these factors and subfactors would be evaluated by assigning one of the following adjectival ratings: excellent, good, fair, and poor.

With respect to price, the RFP contained the following pricing formula:

$$\text{Unit price} = \text{Delivered Price} + \text{Fixed Distribution Price}$$

The RFP defined “unit price” as the total price (in United States currency) that is charged to the agency per unit for a product delivered to the government. RFP at 141. The RFP defined “delivered price” as the manufacturer/supplier’s actual invoice price (in United States currency) to deliver the product to the prime vendor’s distribution point. RFP at 140. Under the RFP, the delivered price may change once every 2 weeks, *i.e.*, “[v]endors may change prices in their STORES [Subsistence Total Order and Receipt Electronic System] Vendor Item Catalog once every two weeks.” RFP at 12.² Finally, the RFP defined “fixed distribution price” as a fixed price, offered as a dollar amount, which represents all elements of the unit price (except the delivered price), for example, general and administrative expenses, overhead, profit, packaging costs, transportation costs, and any other projected expenses associated with the distribution function; under the RFP, the distribution price remains fixed for each year of contract performance. RFP at 140.

In order to evaluate offerors’ prices on an equal basis, the RFP required offerors to propose prices for 86 core food and non-food items. For a number of these core items, the RFP required an offeror to provide invoices or written quotations to support the prices proposed. For each core item, the RFP listed an estimated quantity (based on previous customer usage) that would be multiplied by an offeror’s unit price (*i.e.*, delivered price per unit plus distribution price per unit), and the

² The RFP provides that, after award, customers will be able to add additional food items to the contract during establishment of the catalog. The RFP requires the contracting officer to determine, among other things, that the items are fairly and reasonably priced. RFP at 27.

extended prices from these computations would be added together to determine an offeror's aggregate price. While the RFP emphasized that core item delivered prices were for evaluation purposes only, the RFP also advised that these proposed delivered prices should not dramatically change for orders placed early in the contract unless documented market conditions were established. RFP at 117. Under the RFP, an offeror's aggregate price for the base period and for each of the option periods would be added together to determine the offeror's total aggregate price to the government. The RFP stated that an offeror's distribution and aggregate prices would be evaluated in accordance with Federal Acquisition Regulation (FAR) § 15.4. RFP at 153. The RFP also stated that an offeror's aggregate price would be evaluated for reasonableness and overall low price to the government. The RFP further called for the agency to evaluate the cost/price realism of the offeror's proposal to determine an offeror's understanding of the RFP requirements and whether the prices proposed were realistic in terms of the performance requirements. RFP at 160.

Two firms--Autofrigo, as teamed with MDV/Nash Finch, and EBREX, as teamed with Lankford SYSCO--submitted initial proposals. (EBREX has been the incumbent prime vendor contractor for Southern Europe for the past 5 years. Under the predecessor contract, Lankford SYSCO, which holds a number of prime vendor contracts in its own right, was EBREX's domestic food supplier, and Autofrigo handled warehouse functions for EBREX in Italy and at other southern Mediterranean locations. MDV/Nash Finch is a domestic food supplier and has held an agency prime vendor contract for ship support in Norfolk, Virginia.) The proposals of Autofrigo and EBREX were included in the competitive range and following discussions, both of these firms submitted final proposal revisions that were evaluated as follows:

	Autofrigo	EBREX
Experience/Past Performance	[deleted]	[deleted]
Product Availability	[deleted]	[deleted]
Distribution Systems/Capability	[deleted]	[deleted]
Quality Assurance	[deleted]	[deleted]
Contingencies	[deleted]	[deleted]
Back-up Zone Plans	[deleted]	[deleted]
OVERALL PROPOSAL RATING	GOOD	EXCELLENT

Source Selection Decision Document, May 5, 2003, at 3-4.

The total delivered, distribution, and aggregate prices for the base and option periods as submitted by Autofrigo and EBREX were as follows:

	Autofrigo	EBREX
Total Delivered Price	#[deleted]	#[deleted]
Total Distribution Price	#[deleted]	#[deleted]
TOTAL AGGREGATE PRICE	#[deleted]	#[deleted]

Id. at 6.

As evident from this chart, Autofrigo’s total aggregate price was #[deleted], or 12.2 percent, higher than EBREX’s total aggregate price. While EBREX’s total delivered price was #[deleted], or 0.08 percent, higher than Autofrigo’s total delivered price, Autofrigo’s total distribution price was #[deleted], or 55.9 percent, higher than EBREX’s total distribution price. Id.

The source selection authority (SSA) determined, based on an integrated assessment of the proposals submitted by Autofrigo and EBREX, that the proposal submitted by EBREX represented the best value to the government. Among other things, the SSA noted that EBREX, as the incumbent contractor, had experience with both normal and contingency situations and had performed at a high level. The SSA further noted that Lankford SYSCO, EBREX’s domestic food supplier, was one of, if not the largest, institutional food distributor in the world; as a result, the SSA concluded that EBREX would be able to optimize product availability based on Lankford SYSCO’s network of supply houses throughout the United States. The SSA pointed out that EBREX’s inventory plan [deleted] would help to assure consistently high fill rates for customers. The SSA commented on EBREX’s vast experience in electronic data interchange to ensure that the cataloging, ordering, and invoicing processes would run smoothly. Finally, the SSA pointed out that over the 5-year term of the contract, the government would save more than #[deleted] million by awarding the contract to EBREX. Id. at 7.

In contrast, the SSA noted that Autofrigo itself lacked experience comparable to that required by the RFP, but did acknowledge that Autofrigo’s team member, MDV/Nash Finch, did have such experience. (The SSA noted that Autofrigo’s [deleted] rating for the experience/past performance technical evaluation factor was “heavily influenced” by the experience/past performance of MDV/Nash Finch. Id. at 4.) The SSA commented that Autofrigo’s proposed inventory management system, which was based on one warehouse facility in Italy serving as the hub where most of the stock would initially be placed for later relocation to other warehouses, was considered risky in terms of late deliveries to, or low fill rates for, locations outside of Italy. The SSA pointed out that Autofrigo did not have any direct electronic data interchange experience. Lastly, the SSA recognized that Autofrigo’s total aggregate price was higher than EBREX’s total aggregate price. Id. at 7.

On this record, the SSA determined that EBREX's higher technically rated, lower priced proposal represented the best value to the government.

ISSUES AND ANALYSIS

Fill Rate

The RFP required offerors to propose a minimum fill rate (*i.e.*, generally, a percentage measurement of the number of cases accepted (excluding, for example, mispicks and damaged cases) versus the number of cases ordered) of 97 percent, and to provide detailed information (*e.g.*, proposed in-house and in-transit inventory levels) clearly demonstrating how the proposed fill rate would be satisfied by the offeror. RFP at 67.³ Under the RFP, an offeror's proposed fill rate would be evaluated under the following two technical evaluation factors: first, under the experience/past performance technical evaluation factor, the agency would assess whether the offeror has consistently provided timely delivery of quality products with consistently high fill rates and, second, under the proposed fill rate subfactor under the product availability technical evaluation factor, the agency would evaluate the offeror's proposed in-house and in-transit inventory levels to ensure that the offeror clearly demonstrated how the stated goals would be satisfied.

Under the predecessor contract, EBREX had an overall average fill rate of [deleted] percent, with a [deleted]-percent fill rate for smaller orders. Contracting Officer's (CO) Statement, Sept. 11, 2003, at 16. In response to this RFP, EBREX proposed a [deleted]-percent fill rate. (Autofrigo also proposed a [deleted]-percent fill rate.) As described above, EBREX proposed to achieve this [deleted]-percent fill rate [deleted]. The agency assigned ratings of [deleted] to EBREX's proposal under the experience/past performance technical evaluation factor and under the proposed fill rate subfactor under the product availability technical evaluation factor.

In its protest, Autofrigo, a warehousing subcontractor to EBREX in Italy under the 5-year predecessor contract, claimed, based on invoices for a 4-month period (May and June, 2002, and April and May, 2003), that EBREX achieved only a 74.5 percent fill rate as the incumbent contractor. Protest, Aug. 22, 2003, at 13-14, 17. In its comments, Autofrigo claimed, based on 17 months of fill rate source documents for the period from January 2002 to May 2003, that EBREX's fill rate was 87.95 percent. Protester's Comments, Oct. 6, 2003, at 15. Autofrigo contends that these fill rates reflect a record of poor past performance by EBREX and do not support the [deleted] ratings assigned to EBREX's proposal under the relevant technical evaluation areas.

³ The RFP stated that the proposed fill rate of 97 percent or higher would become the contract requirement upon award.

In reviewing a protest against an agency's proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Consolidated Servs. Worldwide, Inc., B-290751.7, Oct. 21, 2002, 2002 CPD ¶ 185 at 4.

As a threshold matter, we point out that Autofrigo does not challenge EBREX's proposed technical approach, as described above, for purposes of achieving the firm's proposed [deleted]-percent fill rate. Rather, Autofrigo, relying on its own calculation of a lower fill rate for EBREX, questions the reasonableness of the agency's evaluation of EBREX's proposed fill rate. We conclude, however, that Autofrigo's calculation of a lower fill rate for EBREX under the predecessor contract is materially flawed and, accordingly, provides no basis for our Office to question the reasonableness of the agency's evaluation in this regard.

More specifically, under the predecessor contract, Autofrigo, as EBREX's warehouse subcontractor in Italy, had access only to that information involving EBREX's operations in Italy. Under that contract, fill rate data for EBREX was calculated weekly, monthly, and yearly for all customers in the following seven categories: Macedonia, the Azores, ship support, Spain, Italy, Turkey, and remote customers. For the period from January 2002 to May 2003, Autofrigo, as EBREX's warehouse subcontractor in Italy, only supported agency customers in Italy (approximately 11 percent of the orders placed under the predecessor contract) and provided ship support (approximately 12 percent of the orders placed under the predecessor contract); in its capacity as EBREX's warehouse subcontractor in Italy, Autofrigo did not support agency customers in Macedonia, the Azores, Spain, Turkey, and remote customers, which support represented approximately 77 percent of the orders placed under the predecessor contract during the referenced timeframe. CO Statement, Oct. 9, 2003, at 2. Autofrigo does not dispute these facts. See Protester's Supplemental Comments, Oct. 15, 2003. On this record, we conclude that Autofrigo's calculation of EBREX's fill rate reflects only a small portion of EBREX's operations (Italy and ship support) for a limited period of time during the 5-year period of contract performance and cannot reasonably be extrapolated to reflect a fill rate covering EBREX's total operation as the incumbent contractor. We also note that the agency's records for the period from January 2002 through May 2003 show that EBREX's overall average fill rate was [deleted] percent, an amount significantly higher than the fill rate calculated by Autofrigo. CO Statement, Oct. 9, 2003, at 2. Therefore, where Autofrigo does not challenge EBREX's proposed technical approach for purposes of satisfying the firm's proposed [deleted]-percent fill rate and where Autofrigo's calculation of EBREX's fill rate is based on materially incomplete data, there is no basis for our Office to question the reasonableness of the agency's evaluation of EBREX's proposed fill rate.

Cost/Price Realism

Autofrigo argues that the agency failed to reasonably assess the realism of EBREX's proposed delivered prices, contending that EBREX's proposed delivered prices for the 86 core items are substantially understated vis-à-vis the actual delivered prices charged by EBREX to the government under its predecessor contract for these items. Protester's Comments, Oct. 6, 2003, at 4. As a result, Autofrigo maintains that the agency runs the risk that the delivered prices EBREX will actually charge to the government will be significantly higher than the delivered prices it proposed for evaluation purposes. We conclude, however, that this argument lacks merit.

Here, as acknowledged by Autofrigo, the agency compared the delivered prices proposed by Autofrigo and EBREX and concluded that while EBREX's total delivered price was slightly higher (by 0.08 percent) than Autofrigo's total delivered price, each firm's total delivered price was fair and reasonable. See FAR § 15.404-1(b) (describing a number of price analysis techniques that may be used to determine whether proposed prices are fair and reasonable, including comparing the prices received in response to a solicitation). In this context, where Autofrigo and EBREX proposed virtually identical total delivered prices, and where, during contract performance, delivered prices, no matter who the contractor is, are subject to market fluctuations, we are at a loss to understand why Autofrigo believes that EBREX's proposed delivered price was not realistic. On this record, Autofrigo has provided no meaningful basis for our Office to question the reasonableness of the agency's conclusion that EBREX's proposed delivered price was fair, reasonable, and realistic.

Finally, we believe that it is significant to point out that Autofrigo's total proposed distribution price was 55.9 percent higher than EBREX's total proposed distribution price. This disparity caused Autofrigo's total aggregate price (delivered price plus distribution price) to be 12.2 percent higher than EBREX's total aggregate price. Autofrigo does not challenge the reasonableness of the agency's price evaluation in this regard. Therefore, where EBREX, the successfully performing incumbent contractor, proposed the lowest total aggregate price, and where EBREX's proposal received a higher technical rating than Autofrigo's proposal, we conclude that the agency reasonably selected EBREX's higher technically rated, lower priced proposal for award.

The protest is denied.

Anthony H. Gamboa
General Counsel